

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 **IN RE: VALSARTAN PRODUCTS**
5 **LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875

6 **CASE MANAGEMENT CONFERENCE**

7 Mitchell H. Cohen Building & U.S. Courthouse
8 4th & Cooper Streets
9 Camden, New Jersey 08101
April 26, 2023
Commencing at 1:12 p.m.

10 **B E F O R E:**

THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

11
12 **A P P E A R A N C E S:**

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THOMAS I. VANASKIE (RET.)
Special Master

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Judicial Law Clerk to The Honorable Robert B. Kugler

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held in open court before The Honorable
2 ROBERT B. KUGLER at 1:12 p.m.)

3 THE COURT: Good afternoon. Thank you. Have a seat.
4 Thanks for coming back to Camden. Camden in the
5 spring is lovely, isn't it?

6 So we have some things to deal with today.

7 Let's do the simple things first, the orders to show
8 cause.

9 So there's four pending, but according to the
10 letters, there's really only one that needs to be determined,
11 Lalonde?

12 MR. HARKINS: Your Honor, we've actually resolved the
13 issues in that, so that order to show cause can be withdrawn
14 as well.

15 THE COURT: So all four of the orders to show cause
16 will be dismissed at this point.

17 So now we have some you want to move to the orders to
18 show cause.

19 You have five. Any updates on those?

20 MR. HARKINS: Two updates. Number 2, Estate of
21 Arlene Cohen, and Number 5, Donald Seifert, have been
22 resolved, and we request the orders to show cause there be
23 withdrawn.

24 So we would request three orders to show cause
25 returnable at the next case management conference: In case

1 number 1, Deborah Bixler; 3, Diane Hardwick; and 4, the Estate
2 of Steven Jiles.

3 THE COURT: Anybody here on the Deborah Bixler matter
4 want to be heard?

5 (No response.)

6 THE COURT: Nope.

7 Diane Hardwick matter, anybody want to be heard on
8 that?

9 (No response.)

10 THE COURT: Or the estate of Steven Jiles, J-I-L-E-S,
11 anybody want to be heard on that?

12 (No response.)

13 THE COURT: So we'll list those all returnable at the
14 next conference.

15 Then you have 16 you want to relist?

16 MR. HARKINS: That's correct, Your Honor. No updates
17 on those. We simply ask you to relist them for the next case
18 management conference agenda.

19 THE COURT: Jace, J-A-C-E, Reyes, anybody?

20 (No response.)

21 THE COURT: David Sheehan; Ricky Young; Jacquelyn
22 Smason, S-M-A-S-O-N; Mina Cole, C-O-L-E; Rafael Feria,
23 F-E-R-I-A; Carol Pottorff, P-O-T-T-O-R-F-F; Estate of Joseph
24 Kreseski, K-R-E-S-E-S-K-I; Charlene Cooney; Phillip Morgan;
25 Thomas Fogarty; Robert Janecek; George Cook; Byron Wrigley;

1 Terrence Byers; Richards Parks.

2 All right. They will all be relisted next time.

3 Thank you.

4 MR. HARKINS: Thank you, Your Honor.

5 THE COURT: All right. I propose now to go through
6 the -- just point by point in the letter of April 24th.

7 The letter from plaintiffs' counsel indicated that
8 you were hoping to meet with them before this conference, so
9 we'll find out what's going on.

10 Manufacturer defendants, who's going to speak for
11 them?

12 MR. OSTFELD: Greg Ostfeld, Your Honor. I'll speak
13 for the manufacturer defendants.

14 THE COURT: I don't have any problem with moving
15 everything a week. That's not a big deal. So we can delay
16 that, because of the scheduling conflicts. Okay?

17 MR. OSTFELD: All right. Thank you, Your Honor.

18 THE COURT: Anything else you need?

19 MR. OSTFELD: I think we understand Your Honor's case
20 management order, and with that one caveat, I think we're
21 ready to go forward.

22 THE COURT: Thank you.

23 Pharmacy defendants in this matter. There's some
24 question of whether or not the plaintiffs' requests are
25 focused enough.

1 Did you talk about this with the plaintiffs before
2 today?

3 MS. KAPKE: Yes, we did. I'm Kara Kapke for the
4 pharmacy defendants.

5 We had a very productive meet and confer yesterday,
6 and I think we can get there. We're not there yet, but I
7 think we can get there.

8 We're making really good progress in understanding
9 the scope of their requests, the format we may be able to
10 produce them in.

11 But we explained this to them, and I'd like the Court
12 to understand that this data is incredibly complex and very
13 difficult to produce just logistically. Pricing and profit
14 data may just not be available at the granular level that
15 plaintiffs seek, so we may have to do several iterative runs.
16 The databases have to be queried in very unique ways, and a
17 lot of times the people that we normally talk to don't have
18 access to the pricing data because it's so confidential.

19 So there are really significant confidentiality
20 concerns here. And I think our meet and confer yesterday with
21 plaintiffs was very productive, and I think we can get there.

22 We would like a written instrument by which we can
23 respond to and explain the productions. Mr. Stanoch needed to
24 confer with the larger group of plaintiffs' counsel. But I
25 certainly hope we can get to an agreement on that necessary

1 document.

2 So with Your Honor's indulgence, what we would ask
3 the Court to allow is the parties to continue that meet and
4 confer process and provide proposed orders and/or a set of
5 finalized discovery requests by the next status conference in
6 lieu of complying with Friday's order.

7 If there is a discrete issue on which we have a
8 disagreement, we'd like the opportunity to raise that at the
9 status conference, but that would be something very narrow,
10 very discrete, not the prior objection that we made that
11 general discovery was closed.

12 Our clients, of course, want to stand on their
13 objections, but at the same we understand the Court wants to
14 push forward. And we're ready and willing to do that. We
15 just need a little bit more time to gather and compile this
16 data, and we would really like to meet and confer to get that
17 written instrument from plaintiff.

18 So what we're asking the Court to do is to allow us
19 to do that meet and confer and have more time for production,
20 have a written discovery request with more specificity, and
21 then have that opportunity to raise possible discrete issues
22 to the Court's attention, if necessary, with the report to the
23 Court by the next status conference.

24 THE COURT: Well, of course you can raise anything
25 with the Court. I mean, that's obvious.

1 Anybody want to respond or talk about this?

2 MR. STANOCH: Yes, Your Honor. David Stanoch for the
3 plaintiffs.

4 I agree with Ms. Kapke that we had a productive meet
5 and confer yesterday, and I think we would be amenable to some
6 additional time for the parties to confer about things; but
7 when I hear things about a formal written instrument and time
8 to respond to a formal instrument, frankly, Judge, that sounds
9 a lot like document requests, which we're going to get
10 objections and partial responses to, which will really drag
11 the matter out. We thought our letter to Your Honor about the
12 very discrete things we need and why, it was very clear. We
13 thought Your Honor's order of Friday was very clear.

14 If we informally have to put into a letter or email
15 again what we think it is, if that helps them with their
16 clients, we're happy to do that. But we just want to make
17 sure that this process does not get dragged out and ultimately
18 we end up before Your Honor arguing the things about
19 overbreadth and burden when I think it sounds like from both
20 sides and Your Honor's intentions is that we should really be
21 getting beyond that at this point and focusing on the data
22 itself and formatting issues of the data and the timing of the
23 data.

24 THE COURT: I'm encouraged that you had a productive
25 meeting, but I'm also concerned that we need to move this

1 thing along. I don't want to drag this thing out and then I
2 don't want to have to deal with a bunch of objections at the
3 time.

4 But what I'm going to suggest you do is Judge
5 Vanaskie will be available in the next couple of weeks, and I
6 want you to keep working and report back to him within 14
7 days.

8 And I hope that report will indicate that you don't
9 need a whole lot more time to get that resolved.

10 MR. STANOCH: I think that's acceptable to
11 plaintiffs, Your Honor.

12 THE COURT: Okay.

13 MS. KAPKE: Thank you, Your Honor, we appreciate
14 that.

15 THE COURT: Thank you.

16 Discovery from the pharmacy defendants concerning the
17 amounts TPPs paid for VCDs.

18 Was there any meet and confer about this issue?

19 MS. KAPKE: Yes, Your Honor. We met and conferred
20 about everything in the letter that we stated.

21 So I think Your Honor's order giving us 14 days to
22 meet and confer would apply to -- if you're so willing, to
23 every issue in our letter.

24 THE COURT: That's fine. Report back to Judge
25 Vanaskie about that.

1 MS. KAPKE: Thank you.

2 THE COURT: Retailers' costs and profits for VCDs.

3 MS. KAPKE: Same, Your Honor.

4 THE COURT: Same, okay.

5 Production of previously redacted retailer
6 identifiers of Con, C-O-N, Eco, E-C-O, Loss members?

7 MS. KAPKE: Same, Your Honor. We met and conferred
8 on that issue.

9 THE COURT: Okay. So that leaves us now with
10 wholesaler defendants.

11 How are you doing?

12 MR. GEOPPINGER: I'm well. How are you, Your Honor?

13 Jeff Geoppinger on behalf of AmerisourceBergen and
14 the wholesalers.

15 Your Honor, if I may, we'd like to talk about CME 32,
16 specifically Section 7.1.1.

17 The Court has ordered the production of profits data
18 for VCDs. Your Honor, we're asking that the Court modify that
19 order to remove the requirement for profits data and the
20 requirement it be produced by May 30th.

21 Your Honor, this issue was addressed with Judge
22 Schneider back in 2020. We submitted affidavits, a good deal
23 of briefing, and Judge Schneider tabled the issue. The
24 requests were actually for net price, and they were not
25 served.

1 The issue, Judge, besides the fact that Judge
2 Schneider determined at that time there was no authority for
3 these requests, the crux of the issue, Your Honor, is really
4 this: Wholesalers don't keep, you know, profits by VCDs.
5 That is not a piece of data that they have that can be
6 produced. And we explained that in detail in the declarations
7 we filed that Judge Schneider reviewed when we had this
8 hearing back in July 2020.

9 And as I noted, he tabled the issue and said, you
10 know, bring it up after the motions to dismiss. And it had
11 not been brought up until, candidly, last week.

12 So, Your Honor, as I said, we don't have the
13 information. So under Rule 34, just practically speaking,
14 there's nothing for us to produce.

15 Additionally, if we were to try to tease this
16 information out, the profits that are associated with
17 specifically VCDs, which I said we don't keep, that would be,
18 as we described in the declarations, quite frankly a herculean
19 task to try to get that information. And there's no
20 assurances it can actually be accomplished.

21 Additionally, Your Honor, beyond the fact that we
22 actually don't have the information to produce, there's some
23 other issues with respect to profits data on VCDs.

24 The requests that the plaintiffs originally served as
25 I mentioned back in 2020 were for net price, and they were

1 kind of overbroad, and they're generic. Right? They're not
2 tied to anything in terms of transactions. For instance, let
3 me give you an example.

4 The plaintiffs have transactional data for TPPs.
5 That transactional data, in taking a look at it -- and they
6 can correct me if I'm wrong -- but it doesn't tell the
7 wholesalers which transactions they were involved in. So ABC
8 doesn't know which transaction, McKesson doesn't know which
9 transaction, Cardinal doesn't know which transaction it was
10 involved in. We don't know which transactions involved other
11 wholesalers who aren't defendants. We don't know which
12 transactions didn't involve wholesalers at all.

13 So if the parties were -- if the wholesalers were
14 even to attempt to try to come up with a way, if it could be
15 done, to tease out profit data, we would need that information
16 on the front end, right, to figure out which transactions who
17 was involved in, to attempt to find what would candidly be an
18 expert, an expert exercise, to figure out what profits went
19 with those transactions.

20 And that's information we don't have. And we would
21 propose that that information would need to be provided on the
22 front end before we could even attempt to try to figure out if
23 we could get that profits data.

24 Additionally, Your Honor, the plaintiffs asked last
25 month for and the order we understand requires production of

1 profits data, you know, for eight years.

2 And a lot of that profits data would be associated
3 with states where disgorgement is not a remedy for the only
4 claim they have here against us, which is unjust enrichment.
5 So that profits data is irrelevant.

6 Finally, Your Honor, there are confidentiality
7 issues, significant confidentiality issues and proprietary
8 issues with that data, as you can imagine, between the
9 wholesalers and generally speaking.

10 So to the extent we would be producing eight years
11 worth of profits data, that's not necessarily tethered to any
12 specific plaintiff, specific case, specific transactions, we
13 would be exposing a lot of confidential information that may
14 be of no relevance and of no use to the plaintiffs, and we
15 would ask that the Court rein that in to some degree. To the
16 extent we could do it, we would want it tied to the case, the
17 plaintiff, and the transactions at issue.

18 So, Your Honor, the question is, where do we go from
19 here.

20 We would suggest that the Court let us pick up
21 basically where we left off in 2020, which is for us to meet
22 and confer about the requests that were not served, that Judge
23 Schneider tabled, to talk about what net price means or
24 whatever terminology that the plaintiffs want to use in those
25 requests; figure out what they're looking for; figure out what

1 the wholesalers can do, which, as I mentioned, is going to end
2 up being some type of expert exercise; and then come back to
3 the Court with an agreement if possible. And if we have any
4 disagreements, we could take those up with Your Honor or with
5 Judge Vanaskie.

6 THE COURT: Who is going to talk for the plaintiffs?

7 MR. STANOCH: David Stanoch again, Your Honor.

8 THE COURT: What do you want them to do? What are
9 you looking for?

10 MR. STANOCH: Your Honor, quite simply, we're looking
11 for the profits data for our unjust enrichment claims, which
12 Your Honor certified.

13 To oversimplify, revenue minus costs, profits.
14 Disgorge ill-gotten gains of those profits. That's it.

15 They argued vehemently and vigorously at class
16 certification that we can't properly calculate that on a
17 classwide basis because we didn't have their cost data or
18 their profit data. We only had some of their sales data.
19 Right? That's because, as we laid forth thoroughly in our
20 briefing at class cert, which I'm sure Your Honor remembers,
21 Magistrate Judge Schneider deferred that discovery and said,
22 we'll do that at another time, we'll get to it.

23 Now is the time to get to it.

24 They say you don't have the costs so you can't
25 calculate profits. We're saying, okay, give us your cost

1 data. They're saying, we don't have cost data. We have no
2 idea what the profits are in these drugs.

3 Well, there's a couple things. Number one, it may be
4 appropriate for us to take 30(b)(6) discovery of their
5 accountants and financial department. While I was sitting in
6 the coffee shop, looking at LinkedIn, I see job after job
7 after job for these three wholesalers advertising people who
8 do profitability margins on generic drugs. So we're a little
9 skeptical, number one.

10 Number two, as Special Master Vanaskie ruled in
11 dealing with the TPP's production of supplemental data just
12 last fall, the fact that the data are aggregated and not
13 produced on a per-product basis does not defeat the relevance
14 of such data.

15 If they say we can't tell you the profit margin on a
16 valsartan pill or drug, okay, if we accept that, you must have
17 some proxy or roll-up by product line or formulary or
18 something else that the biggest three Fortune 50 pharmacy
19 companies in the world would use to look at the profitability
20 margins on their products, in which case they can give us the
21 aggregated or proxy data, and we'll do the work, as we've been
22 doing for years in this case, to come up with what we think is
23 appropriate.

24 So we think that information should be produced in
25 any form that it exists. We'd prefer not to go on the line of

1 30(b)(6) testimony, but if they insist they have no idea what
2 their costs are aside from that being an accounting issue to
3 me, we think the answer here is what Special Master Vanaskie
4 did with the TPPs, what's the next best thing, aggregated
5 data, proxy data, whatever they use in the ordinary course of
6 business. There must be something, Judge.

7 THE COURT: You have to have some kind of data.

8 MR. GEOPPINGER: We do. We do. We have --

9 THE COURT: I mean, you can't run a business without
10 that kind of data.

11 MR. GEOPPINGER: We have price paid and we have
12 invoice prices. That's not profit data. That data is
13 responsive arguably to 7.1.2, 7.1.3.

14 And we can -- we expect we could roll that out by May
15 30th, and we will let the Court know if we had any issue with
16 getting that done by that day.

17 But that is not profits data. And as Mr. Stanoch
18 acknowledged, they're looking for a proxy for that. And that
19 is what we are proposing, is what will be an expert exercise,
20 is to come up with some kind of proxy and to have the parties
21 discuss after, I guess -- after they have our, you know, costs
22 paid and our invoice data to come up with some -- I guess
23 based on that information, if that's where they want to start,
24 come up with some way to discuss what can be done to attempt
25 to come up with a proxy for, you know, this idea that we just

1 push a button and our profits data for VCDs comes out; because
2 it doesn't, because we don't keep it by product line.

3 THE COURT: Well, they said they'll do the work. And
4 you're right, it's going to be experts.

5 MR. GEOPPINGER: So it will probably be both of us
6 doing the work, yes.

7 THE COURT: Okay. You know, I think they're entitled
8 to all that data. I understand your representation you don't
9 have profit data, you know, per line of drugs. Fine. But
10 you've got to give them all the other stuff and let them do
11 the work. I mean, you've got to tell them what you have so
12 they can decide what they want, what kind of data you keep
13 regarding costs, sales prices, all that kind of stuff.

14 MR. GEOPPINGER: Right. We have -- we have price
15 paid, invoice price.

16 THE COURT: Okay.

17 MR. GEOPPINGER: That can be provided. And I would
18 suggest that we do that. And then if the Court is agreeable,
19 hold in abeyance, remove, however the Court would like to
20 handle it, the requirement that we produce profits data by May
21 30th, and we engage in the meet and confer, and then
22 basically, as I said, pick up where we left off on that issue.

23 THE COURT: You can't produce something you don't
24 have, but you have to convince them that you don't keep it. I
25 don't know how -- I mean, I don't know how they propose to go

1 about finding out whether that's true or not, but they have a
2 right to know that.

3 So I think what you need to do is talk to each other,
4 hone in what they say they have and how it meets your
5 requirements, and report back to Judge Vanaskie in 14 days on
6 where you are and what's left to be done.

7 And, you know, we'll get you whatever data we can get
8 that exists, and we'll go from there.

9 MR. STANOCH: Very good, Your Honor. If they're
10 forthcoming about what next best data they have in these
11 regards, then I'm optimistic that we can work towards
12 something.

13 THE COURT: Well, I'm hoping to avoid a 30(b)(6) on
14 those issues. You know, I've had some success avoiding
15 30(b)(6)s by just getting the people together in a room,
16 talking it out. I mean the people who know what the data is
17 and talking out, so both sides can figure out informally, no
18 record being made, of what there is. And hopefully there's a
19 level of trust between both sides that you can accept what
20 their people say and they can accept what it is you say you
21 need and what you think they have. Okay?

22 MR. STANOCH: Absolutely. Yes, Judge.

23 THE COURT: Maybe we'll try that, just a suggestion.
24 So we'll go from there.

25 MR. GEOPPINGER: Sounds good, Your Honor.

1 I have one other issue I'd like to address, if I may.

2 THE COURT: Sure.

3 MR. GEOPPINGER: And that is the wholesaler
4 defendants' request for discovery from the plaintiffs. And
5 I've already alluded to some of it.

6 What -- you know, we believe the CMO clearly opens
7 discovery with respect to the unjust enrichment claim that's
8 been certified. That's essentially what it says.

9 And we think we need some discovery from the
10 plaintiffs on that -- on that issue. Specifically what we are
11 looking for is the ability to serve some requests for
12 production, potentially 30(b)(6) topics on the issues we've
13 identified and some proposed discovery we've provided to them,
14 which, of course consistent with how we've handled this, we
15 would, you know, negotiate and I would assume ultimately
16 submit to Special Master Vanaskie for -- Judge Vanaskie for
17 approval.

18 In terms of exactly what we're looking for, I
19 mentioned the transactional data. That's a big one. We're
20 looking for transactional data from the TPPs that identifies
21 which wholesaler was involved in which transaction.

22 We are also looking for information about the value
23 of the VCDs to the TPP plaintiffs. And a big piece of that
24 information is their profits.

25 These companies ostensibly profited by filling -- by

1 reimbursing for these prescriptions. So the wholesaler
2 defendants are interested in taking discovery, as they are of
3 our profits, of taking discovery of the TPP defendant --
4 plaintiffs' profits.

5 THE COURT: What does their profits have to do with
6 the unjust enrichment claim?

7 MR. GEOPPINGER: Well, Your Honor, the unjust
8 enrichment claim is based upon their theory that the VCDs that
9 they reimbursed for were worthless, and them making a profit
10 on doing so would tend to dispute that.

11 Additionally, there's an unclean hands defense.

12 THE COURT: I'm not sure how that -- I'm not
13 following you.

14 How does their profit dispute what you made on this?

15 MR. GEOPPINGER: It doesn't dispute what we made,
16 Your Honor, but their profit tends to disprove that they
17 were -- that these VCDs were worthless to the TPPs.

18 THE COURT: How does it disprove that the pills were
19 worthless? I don't get it.

20 MR. GEOPPINGER: The TPPs made profit by reimbursing
21 for them.

22 THE COURT: Okay.

23 MR. GEOPPINGER: So if they're asking for our -- to
24 disgorge our profits that we ostensibly garnered from
25 distributing them --

1 THE COURT: Right.

2 MR. GEOPPINGER: -- we would like to take discovery
3 of what their profits were --

4 THE COURT: But I don't understand what that has to
5 do with whether or not you need to disgorge the profits you
6 made. Just because they made profit -- I'm sure they did. So
7 what?

8 MR. GEOPPINGER: It would be -- I would contend they
9 would not be able to prove the elements of their unjust
10 enrichment claim if they made a profit off of the
11 reimbursement of these drugs such that they would then be able
12 to require us to disgorge our profits.

13 THE COURT: How does their profit become a material
14 element of what they need to prove for unjust enrichment?

15 MR. GEOPPINGER: They have to prove, Your Honor,
16 although the elements are different across the different
17 states, but generally speaking, Your Honor, they would have to
18 prove that it would be unjust for us to keep our profit in a
19 situation where that would be -- it would be unfair for us to
20 keep our profit. And I would contend that it would not be
21 unfair for us to keep our profit or it's a defense to us to
22 keep our profit if the plaintiff itself profited from the
23 drugs.

24 THE COURT: Well, I'm not seeing it. Maybe -- I
25 guess I'm missing it, but okay.

1 What else?

2 MR. GEOPPINGER: So those are the two main items,
3 Your Honor. There's also a number of requests that we've
4 asked for that explore the elements of the unjust enrichment
5 claim, and they're targeted to exactly that.

6 So we would like the Court just to order that we have
7 the ability to also take discovery on the unjust enrichment
8 claim in the form of requests for production, potential
9 30(b)(6) topics.

10 THE COURT: Have you told the plaintiffs exactly what
11 it is you're looking for?

12 MR. GEOPPINGER: Your Honor, we served them with a
13 set of the discovery requests that we propose, albeit it was
14 recently, so I'm not trying to jam anybody up here. But yes,
15 we have given them the proposed discovery requests.

16 THE COURT: Okay. What do the plaintiffs say about
17 that?

18 MR. SLATER: Your Honor, I'm going to speak very
19 briefly. Adam Slater for the record.

20 We looked at their requests. I don't know if the
21 Court has had a chance to see it. These are among the most --
22 and I'm using the word, taking it from the rules, abusive
23 discovery requests I've ever seen. It's as if somebody was
24 sent into a room and told to come up with literally every
25 single thing you could think of.

1 And if I'm reading these correctly, they have a
2 claim-by-claim request for documents and 30(b)(6). And if I'm
3 understanding the request, every claim is every single pill
4 that was sold. I assume they're defining that as a claim.
5 And they want to take discovery on every single pill, 41
6 different categories of information, down to -- and they want
7 to do this in both the document production and the
8 depositions, the medical records of every person who is
9 involved in each claim. So they're expecting that the TPPs
10 are going to go and find the person who took the pill, get
11 their medical records.

12 I'm just giving those as a couple examples. They're
13 so massively harassing, these requests, and so far beyond what
14 we're hearing that, frankly, we think the whole thing should
15 be stricken on its face because it's so far beyond what you
16 just heard or what is reasonable in this litigation.

17 And I'll add one thing. They were at all the
18 depositions, participated with the defense group on all the
19 discovery taken of the TPPs, including when the last request
20 was made for the fill-in discovery. So we really think that
21 they should be able to live with what's already been done.

22 MR. GEOPPINGER: Your Honor, I disagree with
23 Mr. Slater's characterization, obviously. The discovery has
24 gone in this case, it's been to submit your discovery and to
25 negotiate it and discuss it with the special master. If we

1 have issues on that front, that's certainly a way to work it
2 out.

3 However, very plainly, Your Honor, they have not
4 produced claims data that identifies any wholesaler involved
5 in any transaction, not just a one-pill transaction. If they
6 reimbursed for 30 pills, 90 pills, 120 pills, whatever the
7 reimbursement was for, there is data associated with each
8 transaction, and none of it identifies any wholesalers. We
9 need that data to understand whether they have a claim against
10 us, and if they do, what the extent of it is.

11 THE COURT: You seem anxious to say something.

12 MR. STANOCH: I'm not, Your Honor. I'm pleased to
13 say I agreed with Your Honor completely before about how this
14 is at all relevant to the unjust enrichment claims we have
15 that by definition focuses on the defendants' conduct and what
16 they did. You don't need to lose money to prove you were
17 cheated, Judge. That's how you do an unjust enrichment claim.
18 It's focused on defense conduct.

19 The history of the discovery, I'm not going to
20 belabor it. All I'll say is highlights, Judge, to refresh
21 your and Special Master Vanaskie's memories is that we've been
22 doing this for years. Discovery closed over a year ago. The
23 TPPs answered a 100-plus-page fact sheet. They produced all
24 their claims data.

25 Wholesalers, along with other defendants, then

1 served, asked for, and were given permission to serve more
2 document requests and data requests on the TPPs. They
3 answered those.

4 Then after discovery closed in the fall, there was a
5 third request that went to Special Master Vanaskie. Again,
6 they were part of that group. They wanted more data. They
7 wanted subsidy data, reimbursement data, rebate data, et
8 cetera. Special Master Vanaskie ordered some of that
9 production. It's been produced or is almost completely
10 produced.

11 And I understand a lawyer inclination of a tit for
12 dat, oh, if we have to produce our cost data, let's put some
13 burden on them too. I get that as a lawyer. But there's no
14 basis in the rules of law to do that now.

15 MR. GEOPPINGER: I'll point out, Your Honor, if I
16 may, the last round of discovery was in the TPP trial case.
17 We weren't defendants in that, so putting us in that group I
18 think is inaccurate.

19 Your Honor, discovery is -- if discovery were closed,
20 then CMO 32 wouldn't have allowed them to do what they asked
21 for just last month, which is to get 30(b)(6) depositions, do
22 custodial discovery, ask for all this other information, which
23 the Court has allowed. And we understand that. We would
24 think it's fair that the defendants would also have the
25 opportunity to take discovery on the same claim, the

1 wholesaler defendants.

2 THE COURT: I'm not going to speak for Judge
3 Vanaskie, but color me skeptical of all this, which I think a
4 lot of it is a bunch of nonsense.

5 But you can bring it before him after you've had a
6 chance to talk. Maybe they'll agree to some of this stuff;
7 maybe they won't. But you can talk for 14 days and bring it
8 before Judge Vanaskie. Okay?

9 MR. GEOPPINGER: All right, Your Honor.

10 MR. STANOCH: Thank you, Judge.

11 THE COURT: Anything else?

12 (No response.)

13 THE COURT: Okay. Because of the request for moving
14 the next date -- June 7th I think was the suggestion, is that
15 what you said, the week after?

16 MR. OSTFELD: Yes, Your Honor. Well, we specifically
17 requested June 7th to exchange proposals for the damages
18 expert depositions, but that would also align with Your
19 Honor's proposal of a May 31st CMC. If you want to have the
20 CMC after those two deadlines, then June 7th would be the
21 earliest. But obviously we're at the Court's convenience as
22 to what date works for the Court.

23 THE COURT: Does that work for everybody, or mostly
24 everybody?

25 MR. HONIK: Yes, sir.

1 MR. SLATER: Sure.

2 THE COURT: Okay. We'll move the May meeting to June
3 7th then in the afternoon, same time. Okay? We'll go from
4 there.

5 Anything else?

6 (No response.)

7 THE COURT: Hearing nothing, we're adjourned. Thank
8 you.

9 (Proceedings concluded at 1:43 p.m.)

10 - - -

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.

13

14 /S/ Ann Marie Mitchell 28th day of April, 2023

15 Court Reporter/Transcriber Date

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